

### **REMARKS**

#### **Not Fully Responsive Reply**

A Non-Final Office Action was mailed on March 12, 2007. A reply was filed on June 12, 2007. A subsequent Office Action was mailed on September 10, 2007 indicating that the reply filed on June 12, 2007 was not fully responsive to the Non-Final Office Action of March 12, 2007. The application subsequently went abandoned.

Applicant respectfully submits that the instant response is fully responsive to the Non-Final Office Action mailed on March 12, 2007. A Petition To Revive Unintentionally Abandoned Application has been filed herewith. Applicant would like to apologize for the administrative error.

#### **Summary**

Claims 1-18 stand in this application. Claim 19 has been canceled without prejudice or disclaimer. Claims 1-4 and 6-18 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

#### **Official Notice**

At page 5 of the Office Action the Examiner takes Office Notice of the subject matter of claims 14 and 16 that is admittedly not disclosed by the cited reference. Applicant respectfully traverses the taking of Office Notice and respectfully requests that the Examiner support the taking of Office Notice with adequate evidence.

According to MPEP 2144.03, Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))." Applicant respectfully submits that the limitations in the above recited claims, asserted to be well-known, or to be common knowledge in the art, are not capable of instant and unquestionable demonstration as being well-known. If such facts are capable of instant and unquestionable demonstration as being well-known, which Applicant does not admit, Applicant respectfully requests that the Examiner provide sufficient documentary evidence to support such a finding.

**35 U.S.C. § 101 – Non-Statutory Subject Matter**

At page 2, paragraph 1 of the Office Action claims 1-13 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 101 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

**35 U.S.C. § 112**

At page 3, paragraph 2 of the Office Action claims 1-13 and 15-17 have been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

**35 U.S.C. § 102**

At page 4, paragraph 7 of the Office Action claims 1-18 stand rejected under 35 U.S.C. § 102 as being anticipated by a foreign patent document EP 1065855 (“Konschak”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended independent claims 1, 14 and 17 in order to facilitate prosecution on the merits. Support for the above amendments can be found in the specification at least at pages 4-6.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that the Konschak reference fails to teach each and every element recited in claims 1-18 and thus they define over the Konschak reference. For

example, with respect to claim 1, the Kenschak reference fails to teach, among other things, the following language:

a processor having an Orthogonal Frequency-Division Multiplexing (OFDM) transceiver operative to use channel knowledge to dynamically select and puncture one or more subcarriers for a packet prior to transmission, and channel delay spread knowledge to dynamically adjust a guard interval of the packet prior to transmission.

Applicant respectfully submits that he has been unable to locate at least the above recited language of independent claim 1 in the teachings of Kenschak reference.

Applicant respectfully submits that the Kenschak reference fails to teach, suggest or disclose the above recited language of independent claim 1. The Kenschak reference arguably teaches that a channel profile is extracted and used to set the length of the cyclic extensions when OFDM data is transmitted. The Kenschak reference does not use the extracted channel profile, however, to alter the signal prepared for transmission. Furthermore, the Kenschak reference does not teach puncturing in any context, and therefore would not use the extracted channel profile to “select and puncture one or more subcarriers for a packet” as recited in claim 1. Therefore, Applicant respectfully submits that the Kenschak reference fails to teach, suggest or disclose each and every element recited in amended independent claim 1.

Claims 14 and 17 features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 14 and 17 are not anticipated and are patentable over the Kenschak reference for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the

anticipation rejection with respect to claims 1, 14 and 17. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2-13, 15, 16 and 18 that depend from claims 1, 14 or 17, and therefore contain additional features that further distinguish these claims from the Kenschak reference.

For at least the reasons given above, claims 1-18 represent patentable subject matter in view of the cited reference. Accordingly, removal of the anticipation rejection with respect to claims 1-18 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited reference. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited reference.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-18 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

Appl. No. 10/607,798  
Response Dated October 14, 2008  
Reply to Office Actions of 3/12/2007 and 9/10/2007

Docket No.: 1020.P16728  
Examiner: Qureshi, Afsar M.  
TC/A.U. 2616

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

---

John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: October 14, 2008

KACVINSKY LLC  
C/O Intellevate  
P.O. Box 52050  
Minneapolis, MN 55402  
(724) 933-5529